SUPREME COURT, U. S.

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In the
Supreme Court of the United States

OCTOBER TERM, 1961

No. 705

GENERAL FINANCE CORPORATION,
APPELLANT,

v.

AUGUST ARCHETTO, TAX ASSESSOR,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

APPELLEE'S MOTION TO DISMISS AND MOTION TO AFFIRM

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Now comes the respondent-appellee, August Archetto, tax assessor, hereinafter referred to as the appellee, and, by counsel, respectfully moves that the appellant's appeal be dismissed or, in the alternative as hereinafter set forth, that the decision and decree of the Supreme Court of the

State of Rhode Island and Providence Plantations, from which the appellant appeals, be affirmed by this Honorable Court.

The appellee respectfully moves that the appellant's appeal from a decision of the Supreme Court of Rhode Island be dismissed on the following grounds:

1. The appeal fails to present any real federal question for review, the opinion of the Supreme Court of Rhode Island having been based on two conclusions: a) that the tax exemptions granted by the state legislature did not violate the state constitution and b) that the instant case did not present facts capable of raising the issue of whether the tax exemptions were violative of the cited provisions of the United States Constitution.

2. The appeal fails to present a substantial federal question for review; the language of the Supreme Court of Rhode Island on the issue of whether the First Amendment is in fact involved is as follows:

> "In granting tax exemptions to religious organizations, however, it seems to us that the incidental benefit is not such as to constitute direct participation by state authorities in promotion of religious education, as the [Supreme] court indicated was the case on the facts peculiar to the *McCollum* decision."

3. The appeal herein, while involving a question of violation of a state constitution, does not in fact present a federal question of any substance or merit.

4. Appellant's claim that the limited statutory tax exemption granted to a portion of church and other properties constitutes a violation of the First Amendment does not

raise a substantial issue of violation of the federal principles of separation of church and state.

5. Appellant's claim that granting tax exemptions, in limited amounts, to certain enumerated bodies unjustly resulted in a tax upon it which is some thirty dollars in excess of a tax made without granting exemptions does not present to this Court a substantial federal issue.

6. The decision of the Rhode Island Supreme Court is grounded on that court's determination that the exemptions do not violate the state constitution; and that court's references, *obiter dicta*, to the federal constitution do not, of themselves, create or present a substantial federal question.

7. The major thrust of appellant's argument, both in its original petition for relief before a justice of the lower court and in its brief to the state's high court, was that the exemptions granted by the state legislature were violative of the state constitution.

8. Appellant's initial pleading in the lower state court, the petition for relief from assessment, contained merely a prayer for relief from tax assessment, under the provisions of a state remedial statute (see Appendix A, appellant's jurisdictional statement, p. 11), and did not pray for a determination that the statutory tax exemption was violative of the federal constitution.

9. The decision of the Supreme Court of Rhode Island, in overruling appellant's exception to the decision of the lower court justice denying the petition for relief from assessment, was based upon adequate non-federal grounds and involved no federal question of substance.

Wherefore, the appellee respectfully moves that the appeal be dismissed or, in the alternative, that the decision of the Supreme Court of the State of Rhode Island and Providence Plantations be affirmed for the reason that the question sought to be reviewed by appellant is insubstantial.

Respectfully submitted,

J. Joseph Nugent,
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Providence, Rhode Island
Attorney for Appellee